

3-24-04



DEPARTMENT OF FINANCIAL SERVICES

FILED
2004 JUN 30 P 12:39
DIVISION OF ADMINISTRATIVE HEARINGS
JUN 9 8 55

TOM GALLAGHER
CHIEF FINANCIAL OFFICER

03-3204
53
FLB-CL05

Treasurer and
Insurance Commissioner
Docketed by: *[Signature]*

IN THE MATTER OF:

Case No. 70539-03-WC

SUSIE RIOPELLE

_____ /

AP

FINAL ORDER

This cause came on before Chief Financial Officer Tom Gallagher, as head of the Department of Financial Services (the Department), for consideration of and final agency action on the Recommended Order issued herein by Administrative Law Judge Fred L. Buckine on March 29, 2004, after a formal hearing conducted pursuant to Section 120.57(1), Fla. Stat. Petitioner Department of Financial Services, Division of Worker's Compensation filed one Exception, consisting of six paragraphs, to the Recommended Order on April 6, 2004. Respondent Riopelle did not file Exceptions.

Petitioner's Exception, directed to paragraphs 29, 30, and 31, of the Recommended Order's conclusions of law, correctly, if somewhat obliquely, asserts that the matter of misclassifying an employee as an independent contractor in a report, as addressed in Section 440.10(1)(f), Florida Statutes, and Rule 69L-6.018, F.A.C., was neither alleged nor proven in this administrative proceeding. Rather, it appears from the record that the proven allegations were that on August 8, 2003, three men employed by Ms. Riopelle's construction company were working on a job-site without the required workers' compensation coverage. At final hearing, Ms. Riopelle defended by admitting

that the men in question were not covered by worker's compensation, but were exempt from that requirement because they were independent contractors. That defense was rejected by the Administrative Law Judge. It appears that in rendering his conclusion of law in paragraph 31, the Administrative Law Judge erroneously treated the independent contractor defense as a substantive allegation made by the Division, and concluded as a matter of law that Ms. Riopelle had "misclassified" her employees as independent contractors, as prohibited by Rule 69L-6.018, F.A.C. That is not the case. The Division's Corrected Stop Work Order, the charging instrument in this matter, did not allege any violation of Rule 69L-6.018, F.A.C. Rather, it alleged violations of Sections 440.10 and 440.38, Florida Statutes (2002), generally, for failure to procure the required workers' compensation coverage for Riopelle's employees, punishable as specifically provided for by Sections 440.107(5) and 440.107(7), Florida Statutes (2002). As no violation of Section 69L-6.018 was either alleged or proved at hearing, there can be no supportable conclusion of its violation or the imposition of a penalty therefor.

Having reviewed the record, including the transcript of proceedings, and the Division's Exception, and being otherwise fully apprised in all material premises,

IT IS HEREBY ORDERED that the Findings of Fact made by the Administrative Law Judge are adopted as the Department's Findings of Fact, and that the Conclusions of Law reached by the Administrative Law Judge are adopted as the Department's Conclusions of Law, except for that portion of paragraph 31 referencing and concluding the existence of a violation of Rule 69L-6.018, F.A.C., which conclusion of law is rejected for not being supported by competent, substantial evidence in the record. This

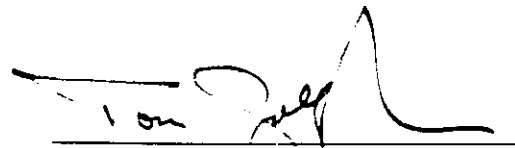
modification of conclusion of law 31 is as or more reasonable than the recommended conclusion. Section 120. 57(1)(l), Florida Statutes.

IT IS HEREBY FURTHER ORDERED that the Recommendation made by the Administrative Law Judge is adopted by the Department, and that Respondent Susie Riopelle is directed to pay the sum of \$1,100 to the Department within thirty days from the date hereof, said sum to thereafter bear interest at the rate of 7% per anum until fully paid.

IT IS HEREBY FURTHER ORDERED that the Corrected Stop Work And Penalty Assessment Order entered by the Division of Worker's Compensation is affirmed, and that Susie Riopelle shall cease all business operations unless and until she provides evidence satisfactory to the Division of Worker's Compensation of having now complied with the workers compensation law by securing the necessary worker's compensation coverage for covered employees and, pursuant to Section 440.107(7)(a), Florida Statutes, paid the civil penalty imposed herein.

DONE AND ORDERED this June 9 day of ~~April~~, 2004.




Tom Gallagher,
Chief Financial Officer

XC: David Hawkins
Randall O. Reder

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Fla. R. App. P. Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal within thirty (30) days of rendition of this Order.